

When you finance or lease a car or other vehicle, your creditor or lessor holds important rights on the vehicle until you've made the last loan payment or fully paid off your leasing obligation. These rights are established by the signed contract and by state law. For example, if your payments are late or you default on your contract in any way, your creditor or lessor may have the right to repossess your car. In many states, creditors or lessors can do this legally without going to court or warning you in advance, as long as they do not breach the peace. In addition, your creditor or lessor may be able to sell your contract to a third party, called an assignee, who may have the same rights and responsibilities as the original creditor or lessor.

However, some state laws limit the ways a creditor or lessor can repossess and sell a vehicle to reduce or eliminate your debt. If any rules are violated, the creditor or lessor may be required to pay you damages.

SEIZING THE CAR

In many states, your creditor or lessor has legal authority to seize your vehicle as soon as you default on your loan or lease. Because state laws differ, read your contract to find out what constitutes a default. In some states, failure to make a payment on time or to meet your other contractual responsibilities are considered defaults.

If your creditor or lessor has agreed to change your payment date or any other contractual obligations, it's possible that the terms of your original contract may no longer apply. Such a change may be made orally or in writing. It's best to get any changes in writing because oral agreements are difficult to prove.

If you default on your loan or lease, the law in most states allows the creditor or lessor to repossess your car. In some states, creditors or lessors are allowed on your property to seize your car without letting you know in advance.

At the same time, the law usually doesn't allow your creditor or lessor to commit a breach of the peace in connection with repossession. In some states, removing your car from a closed garage without your permission may constitute a breach of the peace.

Creditors or lessors who breach the peace in seizing your car may be required to compensate you if they harm you or your property.

SELLING THE CAR

Once your car has been repossessed, your creditor or lessor may decide to keep the car as compensation for your debt or sell it in either a public or private sale. In some states, your creditor or lessor

must let you know what will happen to the car. For example, if a creditor or lessor chooses to sell the car at public auction, state law may require that the creditor or lessor tell you the date of the sale so that you can attend and participate in the bidding. If the vehicle is to be sold privately, you may have a right to know the date it will be sold.

In either of these circumstances, you may be entitled to buy back the vehicle by paying the full amount you owe, plus any expenses connected with its repossession, such as storage and preparation for sale. In some states, the law allows you to reinstate your contract—reclaim your car by paying the amount you owe, as well as repossession and related expenses (such as attorney fees). If you reclaim your car, you must make your payments on time and meet the terms of your reinstated or renegotiated contract to avoid another repossession.

The sale of a repossessed car must be conducted in a commercially reasonable manner—according to standard custom in a particular business or an established market. For example, the sale price might not be the highest possible price—or even what you may consider a good price—but a sale price far below fair market value may indicate that the sale was not commercially reasonable. Depending on state law, failure to sell the car in a commercially reasonable manner may give you either a claim against your creditor or lessor for damages or a defense against a deficiency judgment—a court order mandating you to pay the debt you owe.

Regardless of the method used to dispose of a repossessed car, a creditor or lessor usually may not keep or sell any personal property found inside. Since state laws vary, check to see if this applies in your state. State laws also may require your creditor or lessor to use reasonable care to prevent others from removing your property from the repossessed car. If you find that your creditor or lessor cannot account for articles left in your car, talk to an attorney about whether your state offers a right to compensation.

PAYING THE DEFICIENCY

A deficiency is any amount you still owe on your contract after your creditor or lessor sells the vehicle and applies the amount received to your unpaid obligation. For example, if you owe \$2,500 on the car and your creditor or lessor sells the car for \$1,500, the deficiency is \$1,000 plus any other fees you owe under the contract, such as those related to the repossession and early termination of your lease or early payoff of your financing. In most states, a creditor or lessor who has followed the proper procedures for repossession and sale is allowed to sue you for a deficiency judgment to collect the remaining amount owed on your credit or lease contract.

Depending on your state's law and other factors, if you are sued for a deficiency judgment, you should be notified of the date of the court

hearing. This may be your only opportunity to present any legal defense. If your creditor or lessor breached the peace when seizing the vehicle or failed to sell the car in a commercially reasonable manner, you may have a legal defense against a deficiency judgment. An attorney will be able to tell you whether you have grounds to contest a deficiency judgment.

In Indiana, if your cash price was \$3,100 or less, the creditor can either repossess the vehicle and you would **not be liable** for any deficiency balance; or the creditor can file judgment. **The creditor could not do both.**

TALKING WITH YOUR CREDITOR OR LESSOR

It's easier to try to prevent a vehicle repossession from taking place than to dispute it afterward. Contact your creditor or lessor when you realize you will be late with a payment. Many creditors or lessors will work with you if they believe you will be able to pay soon, even if slightly late.

Sometimes you may be able to negotiate a delay in your payment or a revised schedule of payments. If you reach an agreement to modify your original contract, get it in writing to avoid questions later.

Still, your creditor or lessor may refuse to accept late payments or make other changes in your contract and may demand that you return the car. By voluntarily agreeing to a repossession, you may reduce your creditor or lessor's expenses, which you would be responsible for paying. Remember that even if you return the car voluntarily, you are responsible for paying any deficiency on your credit or lease contract, and your creditor or lessor still may enter the late payments and/or repossession on your credit report.

If you need help in dealing with your credit or lease contract, consider using a credit counseling service. There are nonprofit organizations in every state that advise consumers on debt management. Counselors often try to arrange a repayment plan that is acceptable to you and your creditors. They also can help you set up a realistic budget and plan expenditures. These counseling services are offered at little or no cost to consumers. Check your telephone directory for the office nearest you.

In addition, universities, military bases, credit unions, and housing authorities often operate nonprofit counseling programs. They also are likely to charge little or nothing for their assistance. Or check with your local bank or consumer protection office to see if it has a list of reputable, low-cost financial counseling services.



The Indiana Department of Financial Institutions, Division of Consumer Credit has many other credit related brochures available, such as:

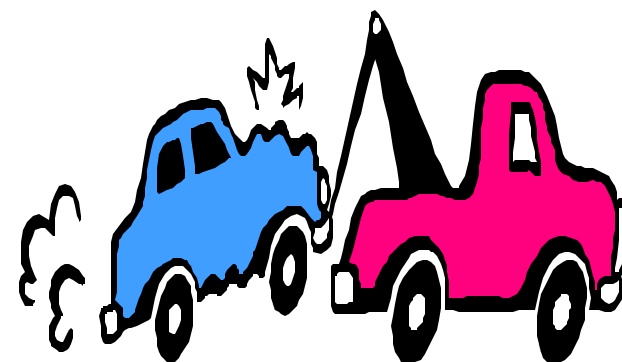
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